ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance	CC Docket No. 97-172

AT&T CORP. COMMENTS ON U S WEST'S FURTHER SUBMISSION

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SUMMARY

The prior comments in this proceeding by AT&T and other parties conclusively demonstrated that U S West's National Directory Assistance ("NDA") service is prohibited by § 271(a) of the Telecommunications Act of 1996 until such time as U S WEST applies for and receives in-region interLATA authority pursuant to § 271(d). Much of U S West's Further Submission in Support Of Petition For Declaratory Ruling ("Further Submission") does nothing more than rehash arguments already discredited by the comments on its earlier petition for declaratory ruling. U S West revisits these prior arguments only selectively, however, as the Further Submission simply avoids any discussion of many of the precedents and arguments that are part of the record in this proceeding. Moreover, the few new arguments the Further Submission offers are wholly unpersuasive. NDA cannot properly be regarded as an "exchange access" service, an "official service," or as belonging to some undefined category that is not even within the scope of "telecommunications" as that term is defined by the 1996 Act.

In addition to repackaging its prior arguments, U S West now contends that NDA is an "incidental interLATA service" pursuant to § 271(g)(4). This argument, however, rests only upon a bare citation to a prior Commission order addressing an easily distinguishable reverse directory service. Even brief scrutiny makes plain that NDA is not within the scope of § 271(g)(4).

Although it has for many months offered NDA on an unseparated basis, U S West also now argues that the Commission should exercise its power under § 10 to forbear from enforcing § 272's nondiscrimination and structural separation requirements

as to that service. As a preliminary matter, because NDA is not an incidental interLATA service, the Commission's prior rulings make clear that § 10 does not authorize it to forbear from enforcing § 272; and the Further Submission's request therefore is simply moot. In all events, even if the Commission could forbear from enforcing § 272, the requirements of § 10 are not satisfied as to U S West's NDA service.

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Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, and the Public Notice released March 19, 1998 (DA 98-532), AT&T Corp. ("AT&T") hereby submits its comments on U S West Communications, Inc.'s ("U S West") Further Submission in Support Of Petition For Declaratory Ruling ("Further Submission").

Much of the Further Submission simply rehashes, often selectively and incompletely, arguments that were previously made in this docket by the comments on U S West's petition for declaratory ruling. AT&T will not repeat its prior arguments, as they are already part of the record in this proceeding.[1] As AT&T and other commenters previously showed, U S West may not offer its NDA service until it obtains in-region

[1] See, e.g., Comments of AT&T Corp., filed September 2, 1997, in Petition of U S West Communications for a Declaratory Ruling Regarding the Provision of National Directory Assistance, CC Docket No. 97-172 ("AT&T Comments"); Reply Comments of AT&T Corp., filed September 17, 1997, in id. ("AT&T Reply").

interLATA authority pursuant to § 271. As the comments also showed, to the extent U S West may at some point be permitted to offer NDA service, that BOC must comply with the fundamental unbundling and nondiscrimination requirements of § 251.

I. NDA IS NOT AN EXCHANGE ACCESS SERVICE

In one of the few novel arguments in the Further Submission, U S West contends that NDA is an "exchange access" service, and therefore is not prohibited by § 271. According to U S West, "Just as a customer accesses local directory assistance in order to use U S West's local exchange service, a customer accesses National Directory Assistance in order to use U S West's exchange access service."[2] This argument fails for at least three reasons.

First, NDA simply does not meet the statutory definition of "exchange access," as it does not permit "access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services."[3] NDA in no way serves to connect a customer to, or facilitates connection to, any IXC's network. A customer that obtains a number via U S West's NDA must then hang up and place his call separately using some wholly distinct method that enables him to access an IXC's network (e.g., by dialing 1+, or 10XXX). Further, "access" is a service that IXCs purchase in order to originate or terminate calls using local exchange facilities, whereas no user of NDA thereby purchases "exchange access" to place a toll call. Indeed, it is a misnomer to speak of residential customers and other switched services purchasers as "using" U S

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2 Further Submission, p. 10 (emphasis in original).

3 47 U.S.C. § 153(16) (emphasis added).

West's access services, as they do not transact for that service in any respect, but simply see its cost reflected in the charges they pay to IXCs for certain calls.

Second, even if U S West's theory that NDA is an "exchange access" service were otherwise persuasive (as it is not), many of its local exchange customers do not use its exchange access services, although they nevertheless can utilize NDA. U S West customers that have direct connections to an IXC's point of presence ("POP"), or are served by a competitive access provider ("CAP") plainly do not use NDA "in order to use U S West's exchange access service,"[4] because they do not make use of U S West's exchange access service at all. Plainly, NDA is a stand-alone offering, not a component of exchange access, as is clear from the fact that AT&T also offers a national directory assistance service, "00 INFO," in its capacity as an IXC.

Third, U S West's argument that NDA is an exchange access service cannot account for the fact that the MFJ court held that 800 service directory assistance "is an interexchange, inter-LATA service."[5] 800 directory assistance is not distinguishable from NDA in any material respect, as AT&T showed in its previous comments.[6]

At a later point in the Further Submission, U S West does attempt to argue that the MFJ court assigned 800 directory assistance to AT&T only to avoid "punish[ing]" that carrier, and that its holding "implicitly suggests" that the BOCs could have offered

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4 Further Submission, p. 10.

5 United States v. Western Electric Co., 569 F. Supp. 1057, 1102 (D.D.C. 1983).

6 See AT&T Comments, p. 5.

that service.[7] In fact, the court ruled that it was "abundantly clear" that 800 directory assistance is an interLATA service -- which necessarily means that the BOCs could not have offered it absent the grant of a waiver permitting them to do so. While the court did state that its intention was not to "punish" AT&T, that remark was made in the context of a discussion that makes plain that it regarded 800 directory assistance as an interexchange service:

> It is abundantly clear, however, that this particular directory assistance is an interexchange, inter- LATA service which is appropriately assigned to AT&T. If this enhanced service were assigned to the Operating Companies in spite of the fact that it performs interexchange functions, it could be done only on the basis that AT&T's competitors should be afforded the ability, through the medium of the Operating Companies, to offer this service without having to pay for it. If the other interexchange carriers wish to offer long distance directory assistance, they will have to construct the necessary facilities. It is not the purpose of the Court's review of the plan of reorganization to "punish" AT&T or to provide advantages to its interexchange competitors to which they are not legitimately entitled.[8]

The above holding contains no suggestion, "implicit" or otherwise, that the BOCs could have offered 800 directory assistance absent a waiver of the MFJ's interexchange prohibition.

II. THERE IS NO BASIS FOR U S WEST'S CLAIM THAT NDA IS NOT AN INTERLATA SERVICE BECAUSE IT IS NOT A TRANSMISSION BETWEEN POINTS SPECIFIED BY AN END USER

U S West also attempts to argue that NDA is not prohibited by § 271(a) because it does not fall within the Communications Act's definition of the term

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7 Further Submission, p. 14.

8 United States v. Western Electric Co., 569 F. Supp. at 1102 (emphasis added, footnotes omitted).

"interLATA service."[9] Section 3(21) defines interLATA service as "telecommunications between a point located in a local access and transport area and a point located outside such area."[10] Section 3(43) defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[11] As U S West would have it, the user of its NDA service does not "specify" that her call will terminate in a point outside her LATA, because she does not know the location of the operator center to which her call will be routed.

Although AT&T dealt with this specious claim in its previous comments, [12] U S West largely ignores those arguments. As AT&T showed, if U S West's reading of the Act's definition of "interLATA service" were credited, then 800 and 900 calls, for which the caller generally will not know the location called, as well as any call for which the caller dials a number without knowing the street address of the called party, must also be deemed not to be telecommunications services.

The Further Submission addresses 800 calling in a single footnote, arguing that for such calls the "user" of the service is the entity paying for the call, and that 800

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9 See Further Submission, pp. 11-13.

10 47 U.S.C. § 153(21).

11 Id. § 153(43).

12 See AT&T Reply, pp. 4-5.

service therefore does constitute an interLATA service.[13] U S West cites no authority of any kind for this interpretation, however, and it does not save its argument in any event.

Even accepting U S West's reasoning arguendo, it cannot account for 900 or 500 calling, in which the caller pays for the transmission of a call -- and must therefore be deemed the "user" of the service -- but nevertheless does not know where his call will terminate. In addition, given U S West's insistence that a user cannot "specify" the destination of a call unless he or she knows the particular location at which it will terminate, the entity paying for an 800 call cannot be said to obtain "transmission, between or among points specified by the user." The entity paying for an 800 call knows only the point at which calls to an 800 number will terminate, not the points from which they will originate. Finally, if the "user" of a service is determined by reference to the party paying for transmission, then calls billed to a third-party also cannot constitute "telecommunications," as the payor "user" does not specify the points of origination and termination, or the information transmitted.

III. NDA IS NOT AN "OFFICIAL SERVICE"

The Further Submission also rehashes the argument that NDA is an "official service" which U S West was authorized to provide under the MFJ, and therefore constitutes a "previously authorized activity" pursuant to § 271(f).[14] Although AT&T and other parties discussed the "official services" issue at length in their prior comments,[15] U S

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13 See Further Submission, p. 12, n.11.

14 See id., pp. 13-15.

15 See, e.g., AT&T Comments, pp. 5-8; AT&T Reply, pp. 5-9.

West fails even to mention -- much less to refute -- many of the arguments already on the record, including contentions based on MFJ precedents which it nowhere addresses. In all events, the limited arguments the Further Submission does offer are simply unpersuasive.

The Further Submission discusses only two decisions by the MFJ court. First, it points to a February 6, 1984 ruling in which the court granted Bell Atlantic's request to provide directory assistance across LATA boundaries for certain customers of independent telephone companies ("ICOs") that were receiving that service from that BOC prior to the MFJ.[16] The Further Submission states, correctly, that the court observed that the DA service at issue was not properly deemed an "official service" because Bell Atlantic was providing it to the customers of another carrier.[17] U S West then argues that because the court does not also say that the services at issue were not "official services" because the MFJ prohibited BOCs from providing national directory assistance, the Commission should presume that such services would have been permissible under the MFJ.[18]

Thus, the Further Submission rests its claim not merely on the slender reed of an argument from implication, but on an implication from the court's silence as to an issue that was in no way presented in the proceeding before it. The February 6th decision does not purport to define "official services," but simply describes one aspect of that

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16 See Memorandum, United States v. Western Electric Co., Civil Action No. 82-1092, 1984 U.S. Dist. LEXIS 10566, at *5-*6 (D.D.C. February 6, 1984) ("February 6th Order").

17 Id., p. *6, n.9.

18 See Further Submission, p. 14 (citing February 6th Order, p. *6 n.9).

concept which the Bell Atlantic request did not satisfy. Bell Atlantic's petition conceded that DA services offered to ICO customers are not official services, and based its request for a waiver of the MFJ's interLATA prohibition on that ground.[19] There is no indication in the Bell Atlantic waiver petition or in the court's order that that BOC sought to provide anything other than ordinary, local directory assistance to the ICO customers at issue, using the same centralized facilities that the court had previously permitted it to use to provide that service to its own customers. Accordingly, the only issue presented was whether Bell Atlantic could provide certain ICO customers with directory assistance services of the same type previously deemed "official services" when provided to its own customers -- i.e., directory assistance for numbers in a caller's own NPA. There was simply no reason for the court to attempt to delimit the extent of the BOCs' authority to offer DA as an "official service," and the fact that it did not do so provides no support for U S West's claims.

The Further Submission also seeks to draw the same implication from an October 30, 1984 ruling by the MFJ court.[20] That decision, however, provides even flimsier support for U S West's claims than the February 6th Order. The October 30th Order addresses a waiver request by U S West to provide directory assistance and operator intercept services to ICO customers within states in that BOC's territory, and

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19 See Bell Atlantic's Motion For Declaratory Rulings, Waivers From The Decree And Changes In LATA Boundaries, filed Dec. 15, 1983, in United States v. Western Electric Co., Civil Action No. 82-1092 (D.D.C.).

20 See Memorandum Order, United States v. Western Electric Co., Civil Action No. 82-1092 (D.D.C. October 30, 1984) ("October 30th Order").

also to telephone customers in other states. The Further Submission cites footnote 2 of the order, which observes merely that U S West had characterized its motion as a request for permission to provide "an information service, an inter-LATA service, or both," and cites the February 6th Order.[21] At most, this footnote demonstrates only that one of U S West's own motions once recognized that a BOC may only provide "official services" to its own customers. The October 30th Order nowhere even suggests that U S West could have provided national directory assistance to its customers. Indeed, as AT&T discussed in its earlier reply comments, the court denied U S West's motion in relevant part, on the ground that providing directory assistance to callers seeking numbers outside their LATAs was an IXC service under the MFJ.[22]

IV. NDA IS NOT AN "INCIDENTAL INTERLATA SERVICE"

The Further Submission also argues that NDA is an "incidental interLATA service" pursuant to § 271(g)(4). In support of this claim, U S West offers only unelaborated citations to § 271(g)(4) itself and to the Commission's recent 272 Forbearance Order, which found that BellSouth's "home NPA" electronic reverse directory service ("RDA") met the requirements of that section.[23] Although U S West

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21 See Further Submission, p. 14, n.18.

22 See AT&T Reply, pp. 6-7. U S West was permitted to provide DA to independent telephone company customers in its in-region states, but could only provide them with numbers within their own NPAs. U S West's request to provide directory assistance to callers in states outside its territory was denied. See October 30th Order, p. 5.

23 See Further Submission, p. 16, n.23, citing Petitions For Forbearance From The Application Of Section 272 Of The Communications Act Of 1934, As Amended,

(footnote continued on next page)

presents its interpretation of § 271(g)(4) as though its reading were self-evident, in fact it cannot withstand even cursory analysis.

Section 271(g)(4) defines "incidental interLATA service" as

> the interLATA provision by a Bell operating company or its affiliate -- ... of a service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA

Any interpretation of the above provision must also take into account the fact that 271(h) requires 271(g) to be "narrowly construed."

The RDA service at issue in the 272 Forbearance Order cannot properly be analogized to RDA, as BellSouth's "home NPA" service provided only local telephone numbers:

> BellSouth states that the home numbering plan area service allows a subscriber to obtain reverse directory information only for customers in the subscriber's numbering plan area. To access this service, the subscriber calls a local telephone number. BellSouth then uses its own facilities to transmit the call to its centralized database and thus provides an interLATA transmission component whenever this transmission crosses LATA boundaries.[24]

The plain meaning of the term "incidental interLATA services" requires that such services be incidental to something -- logically, to a service which the BOC is permitted to offer. Thus, BellSouth's "home NPA" service included an interLATA component only for the

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(footnote continued from previous page)

> To Certain Activities, Memorandum Opinion and Order, CC Docket No. 96-149, DA 98-220, released February 6, 1998, ¶ 68 ("272 Forbearance Order").

[24] 272 Forbearance Order, ¶ 56 (emphasis added).

data retrieval required to provide RDA service to customers that sought to obtain local listings.

U S West's reading of § 271(g)(4) would permit BOCs to offer interLATA services without limitation in order to provide data storage or retrieval functions. That argument proves far too much, and cannot be reconciled with the Commission's prior rulings. For example, under U S West's interpretation, a BOC could offer any type of Internet or dial-up database service on an in-region interLATA basis prior to obtaining § 271 approval. The Commission squarely rejected this view in its Non-Accounting Safeguards Order:

> If a BOC's provision of an Internet or Internet access service (or for that matter, any information service) incorporates a bundled, in-region, interLATA transmission component provided by the BOC over its own facilities or through resale, that service may only be provided through a section 272 affiliate, after the BOC has received in-region interLATA authority under section 271.[25]

In keeping with the above-quoted ruling, to date the BOCs have designed their Internet service offerings so that their in-region customers utilize access numbers within their own LATA,[26] which they would not be required to do if they read § 271(g)(4) in the manner U S West suggests.

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[25] First Report and Order and Further Notice of Proposed Rulemaking, Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Telecommunications Act of 1934, as Amended, CC Docket No. 96-149, FCC 96-489, released December 24, 1996, ¶ 127 (emphasis added).

[26] See, e.g., Order, Bell Atlantic Telephone Companies: Offer of Comparably Efficient Interconnection to Providers of Internet Access Services, CCBPol 96-09, DA 96-891, released June 6, 1996, ¶¶ 10, 50.

V. THE COMMISSION DOES NOT HAVE AUTHORITY TO FORBEAR FROM ENFORCING § 272 AS TO U S WEST'S NDA SERVICE

The record in this proceeding makes clear that: (i) NDA is an interLATA service; (ii) U S West was not "previously authorized" to provide that interLATA service pursuant § 271(f); and (iii) NDA cannot be characterized as an "incidental interLATA service" under § 271(g). Accordingly, U S West may not offer its NDA service until it obtains in-region interLATA authority, and its current provision of NDA is -- and has been since its inception -- unlawful. Moreover, the fact that U S West cannot offer NDA until it obtains in-region interLATA authority renders moot its request that the Commission forbear from enforcing § 272 as that service. The Commission concluded in its recent 272 Forbearance Order that "section 10(d), read in conjunction with section 271(d)(3)(B), precludes our forbearance for a designated period from section 272 requirements with regard to any service for which a BOC must obtain prior authorization pursuant to section 271(d)(3)."[27] Accordingly, the Commission need not even reach U S West's forbearance claims in this proceeding, but should simply clarify forthwith that its NDA service is not permitted under § 271.

VI. EVEN IF FORBEARANCE WERE PERMISSIBLE, U S WEST'S NDA SERVICE COULD NOT SATISFY THE REQUIREMENTS OF § 10

U S West concedes that if NDA is an "incidental interLATA service" (as AT&T has shown that it is not), § 272(a)(2)(B) would require that it be offered in

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[27] 272 Forbearance Order, ¶ 23.

compliance with the structural separation and nondiscrimination safeguards of § 272.[28] Nevertheless, U S West today provides NDA -- and has provided that service since April 1997 -- on a fully integrated basis. Thus, even under its own untenable reading of § 271(g)(4), U S West is today in violation of section 272, and has been in violation of that provision since it introduced NDA service. To the extent that the Commission believes that it even need reach the forbearance question, it should not countenance U S West's attempt to use § 10 to seek retroactive authority to engage in conduct that was plainly illegal at its outset. Indeed, nothing in § 10 authorizes the Commission to waive carriers' liability for fines or damages based on past unlawful conduct.

In all events, even if the Commission had authority to forbear from enforcing § 272 as to NDA (as it does not), U S West plainly could not satisfy the three-part test required by § 10. The 272 Forbearance Order observed that a searching inquiry is required in order to grant forbearance.

> To forbear, we must determine that each of the three forbearance criteria set forth in section 10 are met. Application of those criteria is not a simple task, and a decision to forbear must be based upon a record that contains more than broad, unsupported allegations of why those criteria are met.[29]

AT&T will discuss each prong of § 10 in turn below.

A. Section 10(a)(1): Application of § 272 is essential to ensure that charges and practices will be just, reasonable and nondiscriminatory

As a preliminary matter, U S West is today engaging in discriminatory practices relating to its NDA offering by denying access to the "411" dialing sequence to

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[28] See Further Submission, p. 16.

[29] 272 Forbearance Order, ¶ 16.

competing providers of directory assistance services. As AT&T showed in its previous comments in this proceeding, § 251(b)(3), the Commission's Second Report and Order in CC Docket No. 96-98,[30] and its N11 Order[31] make clear that LECs must allow other carriers nondiscriminatory access to familiar dialing sequences such as 411 and 555-1212.[32] U S West asserts that is has complied with these requirements because it will make 411 available "to any CLEC purchasing switching from U S West or reselling U S West's local exchange service."[33] However, limiting access to 411 to local exchange carriers does not comply with the governing law.

Carriers' right to obtain nondiscriminatory access to 411 and 555-1212 arises from § 251(b)(3) of the Act, which requires LECs to provide both dialing parity and nondiscriminatory access to directory assistance to "competing providers of telephone exchange service and telephone toll service," not merely to other LECs. That section's reference to providers of exchange "and" toll services plainly is intended to apply to carriers that offer either one of those forms of service -- rather than only to those that offer both -- as the Commission has already determined that LECs' "dialing parity" obligations require them to permit their local exchange customers to presubscribe to the

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30 Second Report and Order and Memorandum Opinion and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-333, released August 8, 1996, ¶¶ 149-151.

31 First Report and Order and Further Notice of Proposed Rulemaking, The Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket No. 92-105, FCC 97-51, released February 19, 1997, ¶¶ 47-48.

32 See AT&T Comments, pp. 12-14; AT&T Reply, pp. 10-12.

33 Further Submission, p. 23.

services of IXCs (i.e., to carriers that offer only "telephone toll service").[34] Further, the Second Report and Order specifically discusses "whether the customers of competing providers of exchange and/or toll service would be able to access directory assistance by dialing '411' or '555-1212,' which are nationally-recognized numbers for directory assistance," and concludes that "permitting nondiscriminatory access to 411 and 555-1212 dialing arrangements is technically feasible."[35] Indeed, in light of the Further Submission's repeated assertions that U S West offers NDA service in competition with IXCs, its offer to permit access to 411 only to LECs rings utterly hollow.

Still further evidence of U S West's obligation to make the 411 dialing sequence available to IXCs is the fact that if the Commission did not forbear from enforcing § 272 as to NDA, then that result also would be required by § 272(c)(1). If U S West sought to make 411 available to its § 272 affiliate so that the affiliate could provide NDA to U S West's local customers, the broad nondiscrimination requirements of § 272(c)(1) would require that BOC also to make that dialing sequence available to other IXCs on the same terms and conditions offered to its § 272 affiliate.

U S West's claim that it has "no market power or bottleneck position with respect to"[36] NDA thus is disingenuous at best. In fact, that BOC enjoys the de facto exclusive right to use the 411 dialing sequence throughout its territory, because it retains

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34 See, e.g., Second Report and Order, ¶¶ 37-42.

35 Id., ¶¶ 149, 152 (emphasis added).

36 Further Submission, p. 23.

an effective monopoly there.[37] And U S West plainly views its exclusive access to 411 as an important competitive advantage, as it highlights that feature in its advertising for its NDA service, informing customers in a recent series of full-page newspaper ads that instead of dialing an area code and 555-1212, they can simply dial "1-411" to reach U S West.[38]

Similarly, as the historic monopoly provider of local services in its territory, U S West controls critical directory data relating to its customers, and to customers of ICOs within its in-region states for which it provides DA services.[39] As with access to the 411 dialing sequence, the Act requires U S West to make these data available to competing carriers whether or not NDA is provided on an integrated basis.[40] If, however, the Commission did not forbear from enforcing § 272 as to NDA, then § 272(c)(1) would also impose nondiscrimination requirements, including the requirement that U S West make directory assistance data available to other carriers on the same terms and conditions on which it provided them to its affiliate (in addition to, e.g., providing

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37 U S West asserts at page 24 of the Further Submission that it is not feasible to make 1-411 available to carriers other than CLECs. Even if that assertion is correct, that fact could not possibly serve as a valid basis either to permit U S West to obtain an effective monopoly over national directory services offered via 411, or to forbear from enforcing § 272 as to NDA.

38 See Exhibit 1 (reduced version of full-page ad from Rocky Mountain News); see also Exhibit 2 (U S West press release touting changes to permit customers in Washington, Oregon and Idaho to use 411 to access NDA).

39 The Further Submission asserts only that U S West has no market power with respect to "nonlocal" directory data, which presumably refers to data relating to states outside U S West's territory. Further Submission, p. 23.

40 See AT&T Comments, pp. 13-14; AT&T Reply, pp. 10-12.

those data as a UNE pursuant to § 251(c)(3)). Accordingly, as it did in the 272 Forbearance Order,[41] if the Commission does elect to forbear from enforcing § 272 as to NDA, it should nevertheless require U S West to comply with the nondiscrimination requirements which that section would otherwise impose regarding access to dialing sequences, directory data, and other "goods, services, facilities, and information, or in the establishment of standards."[42]

The Further Submission also asserts that forbearance satisfies § 10(a)(1)'s requirement that enforcement is not necessary to ensure that charges are just and reasonable, because U S West's costs will be lower if it can offer NDA on an integrated basis and forbearance therefore will help ensure lower prices for consumers.[43] This claim provides no basis for the Commission to forbear, as it amounts to nothing more than an attack on Congress' decision to require structural separation of the BOCs' interLATA operations in § 272. In virtually all cases, structural separation will impose certain costs on the BOCs that they could avoid through integration, but nothing in section 272 makes the separate affiliate requirement contingent on its cost. If avoiding the costs of operating a separate affiliate could constitute grounds for forbearance, the Commission effectively would be required to forbear from all aspects of § 272 over which it had that power. Such a finding would require the irrational conclusion that Congress withdrew in § 10 a significant portion of what it enacted in § 272.

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41 See, e.g., 272 Forbearance Order, ¶ 83.

42 47 U.S.C. § 272(c)(1).

43 See, e.g., Further Submission, p. 19.

Similarly, U S West's assertion that it somehow would be unfair to require it to employ a separate affiliate to offer NDA when CLECs can offer that service on integrated basis rests on a fundamental misapprehension of the purpose of § 272.[44] That section seeks to prevent the RBOCs from, inter alia, leveraging their monopoly over local exchange services into interLATA markets -- a purpose that would not be served by applying a separate affiliate requirement to CLECs. The fact that CLECs are not required to comply with separate affiliate safeguards is simply irrelevant to the § 10 inquiry as to NDA or any other service. Congress has decided that structural separation is necessary to protect consumers and competition from BOC abuses of their market power, and § 10 is not an invitation to the Commission to rewrite that decision on a wholesale basis.

B. Section 10(a)(2): Application of § 272 is necessary for the protection of consumers

U S West asserts that enforcement of § 272 is not necessary because other Commission and state commission regulations are sufficient to protect consumers.[45] Once again, U S West's reasoning would require the Commission to repudiate Congress' determination that structural separation is necessary to protect both consumers and competition. Further, this rationale was expressly rejected in the 272 Forbearance Order:

> We also reject BellSouth's argument that compliance with the Commission's cost allocation, cost allocation manual, and independent audit requirements provides sufficient consumer protection and that we should, therefore, find this forbearance criterion satisfied solely on that basis. Congress was aware of

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44 See id., p. 29.

45 See id., p. 27.

these requirements when it required the BOCs to provide interLATA information services only through separate affiliates. A finding that compliance with the Commission's cost allocation, cost allocation manual, and independent audit requirements, and with parallel state requirements, is sufficient to protect consumers would be inconsistent with the Congressional judgment that led to that separate affiliate requirement.[46]

C. Section 10(a)(3): Application of § 272 is necessary to protect the public interest and promote competition

The Further Submission repeatedly asserts that its NDA offering has increased competition by prompting AT&T to introduce its "00 INFO" service.[47] This assertion is demonstrably false, however. U S West states that it introduced NDA in April 1997. AT&T began providing national directory assistance services via 800-CALL-ATT in 1994, and MCI also introduced national directory assistance via 800-CALL-INFO (which it has since withdrawn) in that same year. AT&T began providing national directory assistance via 900-555-1212 in 1995, and rolled out 00 INFO on a nationwide basis in September 1997. The timing of AT&T's introduction of 00 INFO was not a competitive response to U S West's NDA offering, but reflected AT&T's ongoing efforts to improve its longstanding national DA offering; for example, by developing the technical capability to use the "00" dialing sequence. U S West's claims that its unlawful NDA service prompted AT&T to offer 00 INFO, and that its continued provision of that service will help ensure AT&T's ongoing commitment to that offering, are simply incorrect. AT&T has offered national directory assistance for years, and intends to continue to do so whether or not U S West maintains its NDA service.

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46 272 Forbearance Order, ¶ 93.

47 See, e.g., Further Submission, pp. 7-8.

Moreover, U S West's assertions that the presence of its NDA offering promotes competition cannot be credited. NDA is a service provided by a local exchange monopolist using an extremely valuable and familiar abbreviated dialing sequence that U S West denies to competing providers of national directory assistance. Given such conditions, it is hardly surprising that U S West boasts that it receives "nearly 400,000" requests for its NDA service each month,[48] since no competitor can offer U S West's local exchange customers national directory assistance using an equally desirable dialing sequence.[49]

VII. U S WEST HAS NO FIRST AMENDMENT RIGHT TO PROVIDE NDA

Finally, U S West once again resorts to the tired refrain that regulation of its operations might offend the First Amendment.[50] That claim is simply baseless.

NDA violates § 271 because it is an interLATA service: U S West transmits interLATA calls from its customers to its operators and provides them with

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48 See Exhibit 2.

49 U S West should not now be permitted to claim that NPA-555-1212 is as desirable to customers as 411 in light of its own advertising campaign promoting the superiority of the latter dialing sequence.

In addition, the "00" dialing sequence AT&T uses for 00 INFO is not yet as familiar to customers as 411. AT&T will be required to devote significant resources to making consumers aware that they can use the "00" dialing sequence for directory assistance, while U S West can take advantage of 411's familiarity immediately and without additional cost. Further, the 00 dialing sequence is only available to customers that are PIC'd to AT&T for interLATA calling, while 411 can be used throughout U S West's local exchange monopoly, as well as in the territories of those ICOs for which it provides directory assistance services.

50 See Further Submission, pp. 30-33.

directory assistance services that were interexchange services under the MFJ, and that are now prohibited by § 271. This prohibition is a line of business restriction, not a limit on U S West's right to free speech. U S West may not offer any interLATA services, without regard to their content, which are not authorized by the provisions of the 1996 Act.[51]

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[51] See generally, Brief for the Respondent (final version), filed January 21, 1998 in BellSouth v. FCC, (D.C. Cir. No. 97-1113), pp. 30-47 (demonstrating that 1996 Act's line of business restrictions do not violate the First Amendment).